



# Unpaid Internships 101

## What is an internship?

An internship is a work-related learning experience for the benefit of individuals who wish to develop hands-on work experience in a certain occupational field.

## What determines an employment relationship with trainees or interns?

As the state and federal definition of “employ” are basically the same, the Department of Labor & Industries (L&I) looks to the U. S. Department of Labor (USDOL) Fair Labor Standards Act for certain training conditions exempted from the wage and hour laws.

Under certain conditions, individuals may — without any expressed or implied compensation agreement — work for their own advantage on the premises of another and are not necessarily employees. Whether trainees are employees depends upon all of the circumstances surrounding their activities on the employer’s premises.

If all six of the following criteria are met, the trainees are not considered employees:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in an educational environment or vocational school (see more details below).
2. The training is for the benefit of the trainee.
3. The trainees do not displace regular employees, but work under their close supervision (see more details below).
4. The business that provides the training derives no immediate advantage from the activities of the trainees, and may in fact be impeded.
5. The trainees are not necessarily entitled to a job at the conclusion of the training period (see more details below).

6. The trainees understand they are not entitled to wages for the time spent in the training. (See Fair Labor Standards Act Fact Sheet linked below and Hours Worked, Policy ES.C.2.)

▶ THE FOLLOWING QUESTIONS HELP CLARIFY ELEMENTS OF THE CRITERIA LISTED ABOVE:

## What does it mean to be similar to an “educational environment”?\*

In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer’s actual operations, the more likely the internship will be viewed as an extension of the individual’s educational experience. For example, this often occurs when a college or university exercises oversight over the internship program and provides educational credit.

The more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer’s operation, the more likely the intern would be viewed as receiving training.

Under these circumstances, the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the work of the intern.

If the interns are engaged in the operations of the employer or are performing productive work that benefits the employer, for example, filing, performing other clerical work, or assisting customers, then they may be entitled to the benefits provided under the wage and hour laws, even if they also derive other benefits from this type of placement.

## What are the displacement and supervision criteria?\*

The following examples provide guidance for when the requirements of the Minimum Wage Act, Chapter 49.46 RCW, applies:

- If an employer uses interns as substitutes for regular workers or to augment its existing workforce during specific time periods; or
- If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the interns will be viewed as employees and entitled to compensation.

Job shadowing opportunities that allow an intern to learn certain functions under the close and constant supervision of regular employees, but where the intern performs no or minimal work, are more likely to be viewed as a bona fide education experience.

### What does the term job entitlement mean?\*

The following are examples of conditions that determine an unpaid internship:

- The internship should be of a fixed duration, established prior to the outset of the internship.
- Unpaid internships should not be used by the employer as a trial period for individuals seeking employment at the conclusion of the internship period.

\* The three questions above were adapted from the USDOL Fact Sheet on Unpaid Internships, online at [www.dol.gov/whd/regs/compliance/whdfs71.htm](http://www.dol.gov/whd/regs/compliance/whdfs71.htm).

## HIGH SCHOOL STUDENTS IN WORK-BASED LEARNING PROGRAMS

### What constitutes paid or unpaid work for high school students in a school-to-work program?

Students may be placed in a school-to-work program on a paid or unpaid basis. L&I will not require payment of minimum wage provided all of the following criteria are met. If all five requirements are not met, the business will not be relieved of its obligation to pay minimum wage, as required by the Minimum Wage Act:

1. The training program is a bona fide program certified and monitored by the school district or the Office of the Superintendent of Public Instruction; and
2. A training plan exists that establishes a link to the academic work, e.g., a detailed outline of the competencies to be demonstrated to achieve specific outcomes and gain specific skills. The worksite effectively becomes an extension of the classroom activity and credit is given to the student as part of the course; and
3. The school has a designated district person as an agent/instructor for the worksite activity and monitors the program; and

4. The worksite activity is observational, work shadowing, or demonstrational, with no substantive production or benefit to the business. The business has an investment in the program and actually incurs a burden for the training and supervision of the student that offsets any productive work performed by the student. Students may not displace regular workers or cause regular workers to work fewer hours as a result of any functions performed by the student, and
5. The student is not entitled to a job at the completion of the learning experience. The parent, student, and business all understand the student is not entitled to wages for the time spent in the learning experience.

If a minor student is placed in a **paid** position, all requirements of the Minimum Wage Act, the Industrial Welfare Act, and child labor regulations must be met.

## WORKERS' COMPENSATION COVERAGE

### When are volunteers allowed by an employer?

Volunteers are permitted for non-profit organizations and governmental, charitable or educational organizations.

Unless it is a bona fide internship meeting the criteria described above, for-profit employers are not permitted to have individuals perform unpaid work, or be designated as "volunteers."

### What type of workers' compensation coverage is available or required for unpaid interns?

For Industrial Insurance purposes, unpaid interns are those who are enrolled in a course of study at an institution of higher learning, such as college, community college, or vocational school and are participating in a work-training program for a defined period of time, approved and authorized by the institution. Unpaid student interns are not considered workers or volunteers, and are **not** covered under Industrial Insurance. Industrial Insurance coverage is not an option for unpaid interns beyond Grade 12.

For high-school students who are in unpaid work-based learning placements, inexpensive coverage is available for medical benefits only and is described in the Fact Sheet publication *Student Volunteers and Workers' Compensation Coverage*:

[www.Lni.wa.gov/IPUB/213-023-000.pdf](http://www.Lni.wa.gov/IPUB/213-023-000.pdf).

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*Other formats for persons with disabilities are available on request. Call 1-800-547-8367. TDD users, call 360-902-5797. L&I is an equal opportunity employer.*

PUBLICATION F700-173-000 [08-2014]